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053,694	07-02-79	Frederick F. Buechel et al	09947

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EXAMINER	
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ART UNIT	PAPER NUMBER
337	6

DATE MAILED:

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SEP 29 1980

GROUP 330

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined.

☒ Responsive to communication filed on 23 June '80

☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), day(s) from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892
- ☐ Notice of Informal Patent Drawing, PTO-948
- ☐ Notice of References Cited by Applicant, PTO-1449
- ☐ Notice of Informal Patent Application, Form PTO-152
- ☐ _____

Part II SUMMARY OF ACTION

- ☒ Claims 1-39 are pending in the application.

Of the above, claims 14-16 and 33-35 (and 39/33, 39/34, 39/35) are withdrawn from consideration.

- ☐ Claims _____ have been cancelled.

- ☐ Claims _____ are allowed.

- ☒ Claims 1-13, 17-32 and 36-38 (and 39/30, 39/31, 39/32, 39/33, 39/34, 39/35, 39/36, 39/37, 39/38, 39/39) are rejected.

- ☐ Claims _____ are objected to.

- ☐ Claims _____ are subject to restriction or election requirement.

- ☐ The formal drawings filed on _____ are acceptable.

- ☐ The drawing correction request filed on _____ has been ☐ approved. ☐ disapproved.

- ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has

☐ been received. ☐ not been received. ☐ been filed in parent application, serial no. _____

filed on _____

- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

- ☐ Other

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1. Claims 1, 4, 7, 20, 23 and 26 are rejected under 35 USC 102 as anticipated by Arkangel, Goodfellow et al, Cloutier or Murray et al. It is clear that "track means" as broadly claimed are present in these references and that they constrain motion to the extent recited. It is also clear that "retention means" as broadly recited is present.

2. Claims 2, 3, 5, 6, 9, 21, 22, 24, 25 and 28 are rejected under 35 USC 103 as unpatentable for the same reasons given in the preceding paragraph and further in view of either of Helfet ('757) or Waugh et al. The provision of a circular curved track means in either of the basic references to allow motion about a longitudinal axis of the implant components would clearly be obvious from either of the secondary references which provide a curved track to allow such motion of one component relative to another.

3. Claims 8 and 27 are rejected under 35 USC 103 as unpatentable over Murray et al or Goodfellow et al for the same reasons as claims 7 and 26 and further in view of the fact that the mating arrangement between bearing insert and tibial component in these two references is fully equivalent to a common dovetail joint. The difference in structure is an obvious one.

4. Claims 10 and 29 are rejected under 35 USC 102 as anticipated by either Goodfellow et al or Cloutier. Both of these references show the various bearing surfaces and include both first and second bearing insert means and first and second track means.

5. Claims 11, 12, 30 and 31 are rejected under 35 USC 103 as unpatentable for the same reasons given in the preceding paragraph and further in view of Waugh et al or Helfet ('757). The use of a curved track in Waugh et al or Helfet ('757) as recited would be obvious to one of ordinary skill in the art from either of the secondary references.

6. Claims 13 and 32 are rejected under 35 USC 102 as anticipated by Cloutier, noting bridge 33.

7. Claims 17 and 36 are rejected under 35 USC 112, second paragraph, as being indefinite in that the phrase "is of noncircular platform" has no clear meaning.

8. Claims 17 and 36 are rejected under 35 USC 103 as unpatentable over Arkangel, Murray et al or Cloutier for the same reasons as claims 1 and 20 and further in view of the fact that the platforms of these references are obviously noncircular, as understood.

9. Claims 18, 19, 37 and 38 are rejected under 35 USC 103 as unpatentable over Goodfellow et al or Cloutier for the same reasons as claim 10 and further in view of Helfet ('757), Walker et al or Upshaw et al. The provision of a slight incongruency as recited would be an obvious modification to Goodfellow et al or Cloutier in view of either of the secondary references. Regarding claim 19, it is not apparent that the recited ratio differs from that of the secondary references and it is also not apparent that such ratio is critical.

10. Claim 39 insofar as it is dependent on claims 20-27 and 36, is rejected under 35 USC 103 as unpatentable for the same reasons as the claims upon which claim 39 depends and further in view of Waugh.

One of ordinary skill in the art would obviously see the applicability of a particular feature of one joint to other related joints. Note that Waugh was a coinventor of the knee prosthesis of the Waugh et al ('731) patent. It would be obvious that track means of the type used in knee prostheses could be applied to ankle prostheses such as that of Waugh.

11. Claims 20-26 and 36 are rejected under 35 USC 102 as anticipated by the patent to Gristina. Note that the breadth of these claims is such that they will read on the first and second bone engaging components and the intermediate spherical bearing insert of Gristina.

12. Claims 14-16 and 33-35 and claims 39/33, 39/34 and 39/35 are withdrawn from further consideration by the Examiner under 37 CFR 1.142(b) as drawn to a nonelected invention. Election was made without traverse in Paper No. 5.

13. The German disclosure of Helfet ('592), although not available as a reference, is cited as of interest.

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9/23/80

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GROUP ART UNIT 837